

State of Nevada
Office of the State Treasurer

**INFORMAL SOLICITATION FOR
ACCOUNTING AND AUDIT SERVICES**



DEADLINE FOR SUBMISSION AND OPENING DATE & TIME:
January 31, 2014 @ 1:00 pm PT

CARSON CITY OFFICE

101 N. Carson Street, Suite 4
Carson City, Nevada 89701-4786
(775) 684-5600 Telephone
(775) 684-5623 Fax

STATE TREASURER PROGRAMS

Governor Guinn Millennium Scholarship
Program
Nevada Prepaid Tuition Program
Unclaimed Property
College Savings Plans of Nevada
Nevada College Kick Start Program

LAS VEGAS OFFICE

555 E. Washington Avenue, Suite 4600
Las Vegas, Nevada 89101-1074
(702) 486-2025 Telephone
(702) 486-3246 Fax

Website: NevadaTreasurer.gov

E-mail: StateTreasurer@NevadaTreasurer.gov

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| 1. OVERVIEW OF INFORMAL SOLICITATION PROCESS | 1 |
| 2. AGREED UPON PROCEDURES FOR LGIP | 2 |
| 3. AUDITING SERVICES FOR PREPAID TUITION PROGRAM | 5 |
| 4. AUDITING SERVICES FOR NEVADA CAPITAL INVEST. CORP | 8 |
| 5. PROPOSAL REQUIREMENTS | 11 |
| 6. SUBMITTAL INSTRUCTIONS | 14 |
| Attachment A | |
| CERTIFICATION OF INDEMNIFICATION AND COMPLIANCE WITH TERMS AND CONDITIONS | 19 |
| Attachment B | |
| CONTRACT FORM | 20 |
| Attachment BB | |
| INSURANCE SCHEDULE | 29 |
| Attachment C | |
| COST PROPOSAL | 32 |

OVERVIEW OF INFORMAL SOLICITATION FOR ACCOUNTING AND AUDITING SERVICES

The Office of the State Treasurer of Nevada (“STO”) and the Board of Trustees of the College Savings Plans of Nevada (“Board”) are seeking proposals from qualified accounting firms for accounting and auditing services. These services consist of:

1. A review of agreed upon procedures for the State of Nevada’s Local Government Investment Pool (LGIP).
2. Auditing of the financial statements and assistance with State Treasurer staff related to the State of Nevada’s Prepaid Tuition Program (PPT).
3. Auditing of the financial statements and assistance with State Treasurer staff related to the Nevada Capital Investment Corporation (NCIC), a non-profit corporation that administers the State’s in-state private equity investment program.

Although the STO will use separate budget accounts to pay for each of these three services, the STO intends to enter into a single contract for these auditing and accounting services, which will be administered by the Office of the Nevada State Treasurer and is anticipated to commence in July 2014, upon the State Board of Examiners’ approval

A separate description of each functional area above and scope of services follows.

**REVIEW OF AGREED UPON PROCEDURES
STATE OF NEVADA
LOCAL GOVERNMENT INVESTMENT POOL**

OVERVIEW OF PROJECT

The Office of the State Treasurer (State Treasurer) is seeking proposals from qualified accounting firms to perform a review of agreed-upon procedures for the Local Government Investment Pool (LGIP). Nevada Revised Statutes (NRS) 355.167 authorized the creation of the LGIP, appointed the State Treasurer as administrator and provides for the general terms of its operations.

The LGIP was established as an alternative investment program to be utilized by State of Nevada local governments for their public monies. Any local government, as defined by NRS 354.474, may utilize the LGIP for purposes of investment. The LGIP's foremost investment objectives include safety of principal, portfolio liquidity, and market return, which is consistent with a conservative, short duration portfolio of securities.

The LGIP is one of several portfolios internally managed by the State Treasurer. The Investment Division has four full-time employees. All LGIP investment activity, which includes the purchases, sales, or maturities of securities, collection of interest income, the deposits or withdrawals of member monies, and the interest allocation process are tracked internally by the State Treasurer's investment reporting system. Interest is distributed to each account on a monthly basis. General ledger accounts within the State's accounting system are used to track LGIP investment activities. Securities purchased, as well as repurchase agreement collateral, are delivered against payment and held in a safekeeping account with the State Treasurer's securities custodian, currently Wells Fargo Bank.

The LGIP investment portfolio is comprised of US Treasury and US Agency securities, commercial paper, and other authorized money market instruments. Investment must be made within the permitted investments set forth in NRS 355.170 and NRS 355.171, which are located at <http://leg.state.nv.us/NRS/NRS-355.html>, and further made per the adopted LGIP Investment Policy, which is located at https://nevadatreasurer.gov/Documents/Investment/LGIP_Investment_Policy.pdf. As of September 30, 2013, the portfolio had a book value of approximately \$504 million. There are eighty-four (84) members and two hundred forty-two (242) individual accounts. Members include State of Nevada cities, counties, school districts, and various special districts.

SCOPE OF WORK

The Awarded Vendor will perform the agreed-upon procedures for the LGIP in accordance with standards established by the American Institute of Certified Public Accountants (AICPA). The contract for these services will be awarded for the fiscal years ending June 30, 2014 through June 30, 2018. The State of Nevada operates on a fiscal year basis which begins July 1 and ends June 30. For each fiscal year's report, the following procedures will be performed:

1. Select three months during the fiscal year. Obtain the listing of LGIP's investment portfolio at the end of each sample month. Determine that the portfolio at the end of each sample month complied with:
 - Specific provisions of Nevada Revised Statutes (NRS) 355.170 and 355.171 and of Section IX, Authorized Investments of the LGIP's Investment Policy, as follows:
 - i. Maturity provisions
 - ii. Credit rating provisions
 - iii. Diversification provisions
2. A. For the same months selected in Procedure #1 above, obtain the monthly investment income earnings from the statements provided to the LGIP by its custodial bank. If applicable, obtain the monthly securities lending earnings from the statements provided to the LGIP by its securities lending agent.
 - Compare the total monthly earnings recorded on the custodial bank's investment statements to the monthly earnings reported on the "Allocated Earnings, Transfers, and Fees" report generated by the STO's portfolio accounting software, Sympro.
 - Recalculate the monthly Treasurer's Fee and compare calculated fee to the amount reported on the "Allocated Earnings, Transfers, and Fees" report generated by Sympro.
- B. For the same months selected in Procedure #1 above, obtain the "Investments by All Types" report generated by Sympro and identify those individual participants' balances that were in excess of \$10 million. In addition, randomly select an additional ten (10) individual participant balances.
 - For each of the individual participants selected, obtain the participant's "Position Report" for the month. Agree the daily deposits and withdrawals on the "Position Report" for the participant to the LGIP's bank statement. For noncash deposits and withdrawals (i.e. typically transfers between individual participant accounts), inspect the documentation authorizing the bond payment and/or journal entry for authorization of transfer.
 - Recalculate the Time Weighted Invested Value reflected on Sympro's "Total Return Report" for each individual participant selected and compare the amount to the Time Weighted Invested Value for the participant as reflected on the "Total Return Report".
 - Given the Time Weighted average balance of the participant relative to the total Time Weighted average balance of all participants, recalculate the amount of the

earnings and fee allocable to each of the sample participants and agree the calculation to the amount actually allocated to the participant per the “Allocated Earnings, Transfers, and Fees”.

3. A. Determine that the June 30th, the fair value of the LGIP’s investment portfolio per its custodial bank was reconcilable to the State of Nevada’s accounting records.
- B. Determine that for the year ended June 30th, the LGIP’s net investment income per its custodial bank was reconcilable to the State of Nevada’s accounting records.

The finished product will be a report issued to the State Treasurer in accordance with standards established by the AICPA. The audit must be completed with delivery of a draft report and management letter to the State Treasurer no later than November 15 following the end of each fiscal year. The final report and management letter must be delivered no later than November 30 following the end of each fiscal year.

Because the agreed-upon procedures listed in the attached schedule do not constitute an examination, the Awarded Vendor will not express an opinion on the accounting records or investment policies of the LGIP. In addition, the Awarded Vendor will have no obligation to perform any procedures beyond those listed in the above scope of services.

AUDIT SERVICES NEVADA PREPAID TUITION PROGRAM

OVERVIEW OF PROJECT

The Board of Trustees of the College Savings Plans of Nevada (“Board”) through its administrator, the State Treasurer, is seeking qualified vendors for audit services. In accordance with the responsibility to administer the Nevada Higher Education Prepaid Tuition Trust Fund (“Fund”) and the Nevada Prepaid Tuition Program, the administrator is requesting proposals to perform an annual audit of the accounts and records of the Nevada Prepaid Tuition Program (“Program”). The Fund is an enterprise fund of the State of Nevada.

The Nevada State Legislature approved the Program during the 1997 legislative session. The statutes governing this Program are contained the Nevada Revised Statutes NRS 353B.001 through 190. NRS Chapter 353B may be located on the web at <http://leg.state.nv.us/nrs/nrs-353B.html>. The Statutes set forth the general provisions of the Program and the duties and authority of the Board and the Treasurer. Information about the Program is located on the Treasurer’s website at <https://www.nvprepaid.gov/>.

The initial enrollment period for the Program was Fall 1998 and approximately 2,892 enrollment forms were received. FY 2013 was the fifteenth enrollment year and over 16,000 children have been enrolled with over \$162 million invested in this program. Enrollment is open to all Nevadans as long as either the purchaser or the beneficiary is a resident of Nevada at the time of enrollment, or the purchaser holds a degree from a Nevada institution of higher education. All contract earnings are tax free according to the Economic Growth and Tax Relief Reconciliation Act of 2001. Program benefits may be used at any eligible education institution nationwide. Disbursements for tuition are made directly to the eligible educational institution and not the student.

The Nevada Prepaid Tuition Program is not supported by the full faith and credit of the State of Nevada, nor is it guaranteed by the State’s General Fund. The Board must continuously evaluate and take necessary measures to remain self-supported and maintain the financial stability of the Program. As such, the Board has approved annual transfers of \$1.8 million in funds from the College Savings endowment account to increase the actuarial soundness of the Program, contracted with an investment consultant to monitor investments and assist the Board and expanded marketing and outreach to increase Nevada families’ participation.

Because of these initiatives, the Program’s popularity has continued to increase and the Program continues to maintain a sound financial position. In Fiscal Year 2013, the Program’s funded status was calculated by the Program’s actuary to be 111.6%. New enrollments in the plan exceeded 800 for the second consecutive year.

Two separate budget accounts are used to account for the administrative activities and the trust fund, which pays for all tuition benefits. Revenues consist of investment earnings, contract

payments and related fees such as enrollment fees, late fees and penalties. Expenditures are paid from a combination of Program enrollment fees and the Fund earnings. Monies are invested in a blended portfolio with an asset allocation of 57% in domestic public equities, using three Vanguard public equity mutual funds, and 43% in fixed income, which is managed currently by Chicago Equity Partners. The Program uses independent contractors to provide information systems administration, investment consulting, audit and actuarial services.

The purpose of the Request for Proposal is to solicit proposals from certified public accounting firms to provide annual financial auditing services to the Program. NRS Chapter 353B.180 states, “The board shall contract with a certified public accounting firm to perform an annual audit of the accounts and records of the state treasurer and the board showing the receipts to and disbursements from the trust fund. The cost of the audit must be borne by the trust fund. The State Treasurer shall make available for inspection all records necessary to perform the audit.” A copy of the financial statements for FY2012 can be found in Appendix B of the FY2012 Nevada Prepaid Tuition Program Annual Report at https://www.nvprepaid.gov/forms/NPT_FY2012_Annual_Report.pdf.

SCOPE OF WORK

The Treasurer is requesting proposals from qualified accounting firms to audit the Program’s financial statements for the fiscal years ending June 30, 2014 through June 30, 2018. The state fiscal year runs from July 1 through June 30. The Awarded Vendor will provide annual audit services, which will involve both compliance and financial elements, and includes the following services or components:

- The objective of the audit shall be to express an opinion as to whether the financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles, which will include tests of the accounting records of PPT and other procedures considered necessary to enable the Awarded Vendor to express such an opinion. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management’s responses to the Awarded Vendor’s inquiries, the basic financial statements, and other knowledge obtained during the Awarded Vendor’s audit of the basic financial statements.
- The audit shall include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, the Awarded Vendor’s audit will involve judgment about the number of transactions to be examined and the areas to be tested. The audit should also include evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
- The Awarded Vendor’s procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories (if applicable), and direct confirmation of receivables and certain other assets

and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions.

- If the Awarded Vendor's opinion on the financial statements is other than unqualified or unmodified, the Awarded Vendor will discuss the reasons with the STO in advance.
- The Awarded Vendor will provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Application of certain limited procedures to PPT's MD&A (Management's Discussion and Analysis) in accordance with auditing standards generally accepted in the United States of America.
- Although management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein, as part of the audit, the Awarded Vendor will assist with preparation of the financial statements and related notes.

Program records are primarily maintained in the STO's Las Vegas office, with some records in the Carson City Office of the State Treasurer. Arrangements can be made to have all pertinent records shipped to either the Las Vegas or Carson City, Nevada Office of the State Treasurer.

AUDIT SERVICES

NEVADA CAPITAL INVESTMENT CORPORATION

OVERVIEW OF PROJECT

During the 2011 Legislative Session, Senate Bill 75 (SB 75) created the Nevada Capital Investment Corporation (NCIC), a nonprofit corporation comprised of a seven member Board of Directors, including appointees by the Governor and legislative leadership. The State Treasurer serves as Chair of the Board of Directors. As a nonprofit corporation, NCIC has its own bylaws and articles of incorporation.

The primary goal of the program is to provide greater diversification of the investment portfolio of the Permanent School Fund of the State of Nevada and thereby enhance the risk-adjusted return of the Permanent School Fund portfolio. Prior to passage of SB 75, the entire Permanent School Fund was invested in fixed income securities. SB 75 authorizes the State Treasurer to transfer up to \$50 million from the Permanent School Fund to NCIC for Nevada-based private equity investments. Based on the private equity program's Nevada orientation, an ancillary benefit will be to grow and diversify the state's economic base, potentially leading to increased employment in Nevada.

In August 2012, a contract with a fund-of-funds manager, Hamilton Lane, to provide investment management services for NCIC was approved by the NCIC Board and the State Board of Examiners. Under its contract with NCIC, Hamilton Lane, a global private equity manager headquartered in Pennsylvania, has complete discretionary authority to invest NCIC's monies. A limited liability company to fund investments called the Silver State Opportunities Fund (SSOF), which includes monies invested by both NCIC and Hamilton Lane, was also established. Presently, periodic transfers are made from the Permanent School Fund in the State Treasury to NCIC to cover either: (1) Hamilton Lane's asset management fees, capital calls for certain administrative and marketing expenses or (2) for investments in either co-investments or underlying private equity funds. NCIC then transfers these monies to the custodial bank for SSOF. Investment returns from SSOF are legally required to be remitted back to the Permanent School Fund, although there is no temporal requirement set in law for the timing of these remittances.

The purpose of the Request for Proposal is to solicit proposals from certified public accounting firms to provide annual financial auditing services to NCIC. The NCIC is considered a component unit of the State of Nevada. Investments by NCIC in SSOF are shown on the NCIC's financial statements at fair value with a corresponding liability shown as "Due to the State of Nevada Permanent School Fund". Separate financial statements are also prepared for SSOF and are audited by an accounting firm. A copy of NCIC's financial statements for FY2013 can be found at https://nevadatreasurer.gov/Documents/NCIC/FY2013_NCIC_FinancialStatement.pdf.

SCOPE OF WORK

The Treasurer is requesting proposals from qualified accounting firms to audit the Program's financial statements for the fiscal years ending June 30, 2014 through June 30, 2018. The state fiscal year runs from July 1 through June 30. The Awarded Vendor will provide annual audit services, which will involve both compliance and financial elements, and includes the following services or components:

- The objective of the audit shall be to express an opinion as to whether the financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles, which will include tests of the accounting records of NCIC and other procedures considered necessary to enable the Awarded Vendor to express such an opinion. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to the Awarded Vendor's inquiries, the basic financial statements, and other knowledge obtained during the Awarded Vendor's audit of the basic financial statements.
- The audit shall include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, the Awarded Vendor's audit will involve judgment about the number of transactions to be examined and the areas to be tested. The audit should also include evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
- The Awarded Vendor's procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories (if applicable), and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions.
- If the Awarded Vendor's opinion on the financial statements is other than unqualified or unmodified, the Awarded Vendor will discuss the reasons with the STO in advance.
- The Awarded Vendor will provide a report (that does not include an opinion) on internal controls related to the financial statements and compliance with the provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Application of certain limited procedures to NCIC's RSI (Management's Discussion and Analysis) in accordance with auditing standards generally accepted in the United States of America.
- Although management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein, as part of the audit, the Awarded Vendor will assist with preparation of the financial statements and related notes.

Records for NCIC are primarily maintained in the Carson City Office of the State Treasurer. Arrangements can be made to have all pertinent records shipped to either the Las Vegas or Carson City, Nevada Office of the State Treasurer.

PROPOSAL REQUIREMENTS

SUMMARY OF PROPOSAL PROCESS

Your response should include, at a minimum, the following areas:

- Firm Background and References, as specified below.
- Substantive Scored Questions
- Cost

FIRM BACKGROUND AND REFERENCES

Firms must provide a company profile. Information provided shall include:

- 1.1 Company ownership (sole proprietor, partnership, etc).
Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State's Office as a foreign corporation before a contract can be executed between the State of Nevada and the awarded firm, unless specifically exempted by NRS §80.015.
- 1.2 The selected firm, prior to doing business in the State of Nevada, must be appropriately licensed by the Office of the Secretary of State pursuant to NRS §76. Information regarding the Nevada Business License can be located at <http://sos.state.nv.us>. Firms must provide the following:
 - Nevada Business License Number
 - Legal Entity Name
 - Is "Legal Entity Name" the same name as Firm is doing business as? [] Yes [] No
If "No," provide explanation.

Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending, as indicated below. Include these disclosures as a separate appendix.

- 1.3 Location(s) of the firm offices and location of the office servicing any Nevada account(s).
- 1.4 Number of employees, both in the State of Nevada and nationally.
- 1.5 Location(s) from which employees will be assigned.

- 1.6 Name, address, e-mail address and telephone number of the firm's point of contact for a contract resulting from this Solicitation.
- 1.7 Relevant background/history and experience of the firm and the resumes of the **key staff who will be assigned to the State**, and the identification and experience of the individual(s) in charge of day-to-day management of the securities issuance, including both the investment banker(s) and the underwriter(s). Include their experience working with taxable and tax-exempt state issuers and specifically Nevada issuers at the State or municipal level.
- 1.8 Length of time firm has been providing services described in this Solicitation to the public and/or private sector. Please provide a brief description.
- 1.9 Has the firm ever been engaged under contract by any State of Nevada agency?
[] Yes [] No If "Yes," specify when and for which agency.
- 1.10 Is the firm or any of the firm's employees employed by the State of Nevada, any of its political subdivisions or by any other government?
[] Yes [] No If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?
- 1.11 Provide an organizational chart of the firm's team which includes the person in charge of and each of the **key personnel assigned to the State** including the contact information for each. This chart should include any individuals with responsibility for significant portions for the services, all of whom have licensing, education and experience appropriate to their assigned responsibilities.

1.2 References

Firms should provide a minimum of three (3) references from engagements performed for state and/or large local government clients within the last three years. **It is in the best interest of the firm to submit references from clients whom key staff which will be assigned to the State serviced.** The State Treasurer's Office may contact any or all business references for validation of information submitted. Provide the following information for each client reference:

- Client name;
- Project description;
- Project dates (starting and ending);
- Technical environment; (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware)
- Staff assigned to reference engagement that will be designated for work per this RFP;
- Client project manager name, telephone number, fax number and e-mail address.

SUBSTANTIVE SCORED QUESTIONS

No more than 6 pages should be used in answering the questions in this section in a font not less than 10 points. Additional pages will not be evaluated.

- 2.1 Governmental auditing and accounting work performed in Nevada
 - 2.1.1 List all governmental auditing and accounting work performed in Nevada in the last five (5) years.
 - 2.1.2. Please indicate which of these assignments were performed by the key personnel assigned to this project, as identified in Section 1.7, above.
 - 2.1.3 Indicate the number of governmental clients in Nevada that have chosen not to retain your firm in the last five (5) years and the reasons why.
- 2.2 List or provide examples of similar engagements performed in the last 10 years and contact information for the client for the following types of engagements. Please indicate which of these assignments were performed by the key personnel assigned to this project, as identified in Section 1.7, above.
 - 2.2.1 Review of agreed upon procedures or audit of a voluntary or involuntary governmental investment pool.
 - 2.2.2 Audit of financial statements for a state prepaid tuition plan or similar governmental defined benefit (DB) program.
 - 2.2.3 Audit of financial statements for a single purpose nonprofit corporation or government instrumentality that has investment authority similar to NCIC.
- 2.3 Describe any special circumstances, experience, qualifications or skills that you believe your firm possesses that you believe are relevant to this engagement.

COST

Interested parties should complete Attachment C and indicate proposed costs on either a fixed-fee basis or not-to-exceed amount for each of the three areas of this Request for Proposal. Firms should also indicate an hourly rate(s) for special project work associated with this engagement.

SUBMITTAL INSTRUCTIONS

In lieu of a pre-proposal conference, the State Treasurer's Office will accept questions and/or comments by e-mail regarding this Solicitation as follows:

- Questions must be e-mailed to the Treasurer's Designee, Troy Watts, at tgwatts@nevadatreasurer.gov. The deadline for submitting questions is **January 10, 2014 @ 1:00 PM Pacific**. Responses to submitted questions and/or comments will be emailed on or about October 5, 2012 to all prospective firms who notified the State by email their intent to respond to this Solicitation. When submitting questions and/or comments, provide your firm's name, contact person's name, address, phone number, fax number, and email address.

SOLICITATION TIMELINE

TASK

DATE/TIME

| | |
|---|------------------------------------|
| Deadline for submitting questions | January 10, 2014 @ 1 PM PST |
| Answers to questions/comments on or about | January 16, 2014 |
| Deadline for submission and opening of proposals | January 31, 2014 @ 1 PM PST |
| Evaluation period | February 3-17, 2014 |
| Interviews (Optional) | February 17-21, 2014 |
| Selection of firm(s) | February 21, 2014 |

NOTE: These dates represent a tentative schedule of events. The State reserves the right to modify these dates at any time, with appropriate notice to prospective firms.

Firms must submit one (1) original printed proposal marked "MASTER" including Attachment A, Attachment C, and copies of the Firm's Insurance Certificates; seven (7) printed identical copies; and one (1) electronic copy on CD in PDF format. Proposals shall be clearly labeled in a sealed envelope or box as follows:

State Treasurer Accounting and Auditing Services Solicitation January 2014

PROPOSAL OPENING DATE: January 31, 2014 @ 1:00 PM Pacific

TO: Nevada State Treasurer's Office
ATTN: Jean Oliver

101 North Carson Street, Suite #4
Carson City, Nevada 89701

FROM: [Place Firm Information Here]

- 3.4 Proposals must be received at the above referenced address no later than **January 31, 2014 @ 1:00 PM Pacific**. Proposals that do not arrive by proposal opening time and date **WILL NOT BE ACCEPTED**. Firms may submit their proposal any time prior to the above stated deadline.
- 3.5 The State will not be held responsible for proposals mishandled as a result of the envelope or box not being properly prepared. Facsimile, emailed or telephone proposals will **NOT** be considered. Proposals may be modified by facsimile, email or written notice provided such notice is received prior to the opening of the proposals.
- 3.6 Firms shall utilize an electronic copy of the Solicitation in order to prepare their proposals and **must** place their written response in an easily distinguishable font immediately following the applicable question. An electronic copy of the solicitation is available in Word format on the State Treasurer's Office's website <https://nevadatreasurer.gov>.
- 3.7 If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
- 3.8 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this Solicitation. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the Solicitation instructions, responsiveness to the Solicitation requirements, and on completeness and clarity of content.
- 3.9 The proposal must be signed by the individual(s) legally authorized to bind the firm.
- 3.10 For purposes of addressing questions concerning this Solicitation, the sole contact will be the Treasurer's Designee. Upon issuance of this Solicitation, other employees and representatives of the Treasurer's Office will not answer questions or otherwise discuss the contents of this Solicitation with any prospective firms or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 3.11 If a firm changes **any** Solicitation language, it will be **grounds for immediate disqualification**.

- 3.12 Firms are cautioned that some services may include licensing requirement(s). Firms shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain the requisite licensure, may be deemed non-responsive. However, this does not negate any applicable Nevada Revised Statute (NRS) requirements.
- 3.13 The evaluation committee may contact the references provided in response to Section 3.2; contact any firm to clarify any response; contact any current users of a firm's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada.
- 3.14 Each firm must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, regulatory investigations or actions, any civil or criminal litigation or investigations pending which involves the firm or in which the firm has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the firm's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.
- 3.15 Clarification discussions may, at the State's sole option, be conducted with responsible firms who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Firms shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals, and such revisions may be permitted after submissions and prior to award, for the purpose of obtaining the best and final offer. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing firms.
- 3.16 Any contract resulting from this Solicitation shall not be effective unless and until approved by the Nevada State Board of Examiners.

TERMS, CONDITIONS AND EXCEPTIONS

- 4.1 The State reserves the right to alter, amend, or modify any provisions of this Solicitation, or to withdraw this Solicitation.
- 4.2 The State reserves the right to reject any or all proposals received prior to contract award.

- 4.3 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated.
- 4.4 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 4.5 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 4.6 The State is not liable for any costs incurred by firms prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the firm in responding to the Solicitation, are entirely the responsibility of the firm, and shall not be reimbursed in any manner by the State.
- 4.7 All proposals submitted become the property of the State.
- 4.8 The awarded firm will be the sole point of contract responsibility. The State will look solely to the awarded firm for the performance of all contractual obligations which may result from an award based on this Solicitation, and the awarded firm shall not be relieved for the non-performance of any or all subcontractors.
- 4.9 The awarded firm must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this Solicitation (Attachment B). Work on the contract shall not begin until after the awarded firm has submitted acceptable evidence of the required insurance coverages.
- 4.10 Notwithstanding any other requirement of this section, the State reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the above-stated Insurance Schedule. It will be the awarded firm's responsibility to recommend to the State alternative methods of insuring the contract. Any alternatives proposed by a firm should be accompanied by a detailed explanation regarding the firm's inability to obtain insurance coverage as described above. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.
- 4.11 Execution of Attachment A of this Solicitation shall constitute an agreement to all terms and conditions specified in the Solicitation, and all terms and conditions therein, except such terms and conditions that the firm expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
- 4.12 The State does not waive its rights to indemnification. Material exceptions to the State's contract (Attachment B) especially, but not exclusively, the indemnification language in

paragraph 14, 16, and Attachment BB could result in the rejection of your firm's response.

- 4.13 The State reserves the right to negotiate final contract terms with any firm selected. The contract between the parties will consist of the Solicitation together with any modifications thereto, and the awarded firm's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the Solicitation, any modifications and clarifications to the awarded firm's proposal, and the awarded firm's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

Attachment A

CERTIFICATION OF INDEMNIFICATION AND COMPLIANCE WITH TERMS AND CONDITIONS OF SOLICITATION

I have read, understand and agree to comply with the terms and conditions specified in this Solicitation. Checking “YES” indicates acceptance, while checking “NO” denotes non-acceptance and should be detailed below. Any exceptions **MUST** be documented.

YES _____ NO _____ SIGNATURE _____

[Firm and Primary Contact’s Name and Title]

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

EXCEPTION SUMMARY FORM¹

| SOLICITATION SECTION NUMBER | SOLICITATION PAGE NUMBER | EXCEPTION (PROVIDE A DETAILED EXPLANATION) |
|-----------------------------------|-----------------------------|---|
| | | |
| | | |
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| | | |

¹ The State does not waive its rights to indemnification. Material exceptions to the State’s contract (Attachment B) especially, but not exclusively, the indemnification language in paragraph 14, 16, and Attachment BB could result in the rejection of your firm’s response.

Attachment B

CONTRACT FORM

The following State Contract Form is provided as a courtesy to firms interested in responding to this Solicitation. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. **Please pay particular attention to the indemnification and insurance requirements, as specified in paragraph 14, paragraph 16, and Attachment BB.**

As with all other requirements of this Solicitation, firms may take exception to any of the terms in the Contract Form, including the required insurance limits. Exceptions will be taken into consideration as part of the evaluation process.

The State does not waive its rights to indemnification. Material exceptions to the State's contract (Attachment B) especially, but not exclusively, the indemnification language in paragraph 14, 16, and Attachment BB could result in the rejection of your firm's response.

Exceptions will be considered during the evaluation process.

It is not necessary for firms to complete the Contract Form with their proposal responses.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

(NAME, ADDRESS, PHONE AND FACSIMILE NUMBER OF CONTRACTING AGENCY)

and

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year. "Current State Employee" means a person who is an employee of an agency of the State. "Former State Employee" means a person who was an employee of any agency of the State at any time within the preceding 24 months.

3. CONTRACT TERM. This Contract shall be effective from _____ subject to Board of Examiners' approval (anticipated to be _____) to _____, unless sooner terminated by either party as specified in paragraph ten (10).

4. NOTICE. Unless otherwise specified, termination shall not be effective until ____ calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that this Contract, inclusive of the following attachments, specifically describes the scope of work. This Contract incorporates the following attachments in descending order of constructive precedence:

| | |
|----------------|---|
| ATTACHMENT AA: | STATE SOLICITATION OR RFP #_____ and AMENDMENT(S) #_____; |
| ATTACHMENT BB: | INSURANCE SCHEDULE: And |
| ATTACHMENT CC: | CONTRACTOR'S RESPONSE |

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of \$ _____ per _____ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: _____, not to exceed \$ _____. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. BILLING SUBMISSION: TIMELINESS. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include, without limitation, one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that the Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

| | | <u>Contractor's Initials</u> | |
|----|--|------------------------------|-------|
| | | YES | NO |
| 1. | Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work? | _____ | _____ |
| 2. | Will the Contracting Agency be providing training to the independent contractor? | _____ | _____ |
| 3. | Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses? | _____ | _____ |
| 4. | Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada? | _____ | _____ |
| 5. | Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, parttime, or of short duration)? | _____ | _____ |
| 6. | Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform? | _____ | _____ |
| 7. | Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State? | _____ | _____ |

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract;

Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

- a. **Additional Insured:** By endorsement to Contractor's general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307, for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
- f. **Approved Insurer:** Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within **Insurance Coverage**, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per **General Requirements**, subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

- a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. NOTIFICATION OF UTILIZATION OF CURRENT OR FORMER STATE EMPLOYEES. Contractor has disclosed to the State all persons that the Contractor will utilize to perform services under this Contract who are Current State Employees or Former State Employees. Contractor will not utilize any of its employees who are Current State Employees or Former State Employees to perform services under this contract without first notifying the Contracting Agency of the identity of such persons and the services that each such person will perform, and receiving from the Contracting Agency approval for the use of such persons.

29. ASSIGNMENT OF ANTITRUST CLAIMS. Contractor irrevocably assigns to the State any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim for relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to the State, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

30. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

31. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this

Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

| | |
|------------------------------------|------|
| Independent Contractor's Signature | Date |
|------------------------------------|------|

Independent's Contractor's Title

| | |
|-----------|------|
| Signature | Date |
|-----------|------|

Title _____

| | |
|-----------------|------------|
| Signature _____ | Date _____ |
|-----------------|------------|

Title _____

| | |
|-----------|------|
| Signature | Date |
|-----------|------|

Title _____

Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On _____
(Date)

Deputy Attorney General for Attorney General

On _____
(Date)

ATTACHMENT BB

INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. **Worker's Compensation and Employers' Liability**

| | |
|-------------------------|-----------|
| Workers' Compensation | Statutory |
| Employers' Liability | |
| Each Accident | \$100,000 |
| Disease – Each Employee | \$100,000 |
| Disease – Policy Limit | \$500,000 |

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. **Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

| | |
|------------------|-------------|
| Each Claim | \$1,000,000 |
| Annual Aggregate | \$2,000,000 |

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **Troy Watts, Marketing Coordinator, Nevada State Treasurer's Office, 555 E. Washington Ave., Suite 4600, Las Vegas, NV 89101.**

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates

for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Troy Watts, Marketing Coordinator, Nevada State Treasurer's Office, 555 E. Washington Ave., Suite 4600, Las Vegas, NV 89101**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

| | | |
|---|---------------|----------------|
| _____ Independent Contractor's Signature | _____ Date | _____ Title |
|---|---------------|----------------|

| | | |
|--------------------------------------|---------------|----------------|
| _____ Signature – State of Nevada | _____ Date | _____ Title |
|--------------------------------------|---------------|----------------|

Attachment C

COST PROPOSAL

Expect for Special Projects, as defined below, fees will include all related costs and expenses, including but not limited to overhead and support staff including all out-of-pocket expenses directly incurred for relevant office expenses (long distance telephone charges, outside printing, postage and delivery services), and travel.

| | Fixed Fee/ Not-to-Exceed Maximum* |
|---|---|
| A. Report on Agreed-Upon Procedures | \$ _____ |
| B. Audit of Prepaid Tuition Program | \$ _____ |
| C. Audit of Nevada Capital Investment Corporation | \$ _____ |
| D. Special Project Work | |

All special projects must be directed in writing by the Treasurer's Office. Special projects may be negotiated at a blended maximum hourly rate or an agreed upon maximum price between the vendor and the Treasurer's Office. Hourly fees will include all related costs and expenses, including but not limited to overhead and support staff except reasonable out-of-pocket expenses directly incurred for relevant office expenses such as long distance telephone charges, outside printing, postage and delivery services, and travel, as approved by the State; reference Attachment F-State Administrative Manual (SAM) section 0325).

Maximum blended hourly rate of service \$ _____

*Indicate whether the fee is a fixed fee or not-to-exceed maximum amount which will be billed on an hourly basis